

KAMPMEIER & KNUTSEN PLLC

ATTORNEYS AT LAW

BRIAN A. KNUTSEN
Licensed in Oregon & Washington
503.841.6515
brian@kampmeierknutsen.com

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Certified U.S. Mail – Return Receipt Requested

Managing Agent
F.H. Sullivan Company, Inc.
2219 Talley Way
Kelso, Washington 98626

**Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND
REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION PLAN**

Dear Managing Agent:

This letter is submitted on behalf of Columbia Riverkeeper, 111 Third Street, Hood River, OR 97031, (541) 387-3030. Any response or correspondence related to this matter should be directed to Brian A. Knutsen at the address provided below. This letter is to provide you with sixty days notice of Columbia Riverkeeper's intent to file a citizen suit against F.H. Sullivan Company, Inc. ("F.H. Sullivan") under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by F.H. Sullivan's National Pollution Discharge Elimination System ("NPDES") permit.

The Washington Department of Ecology ("Ecology") granted F.H. Sullivan coverage under Washington's Industrial Stormwater General Permit ("ISGP") issued on December 3, 2014, effective January 2, 2015, under NPDES Permit No. WAR-011414 (the "2015 Permit"). Ecology granted F.H. Sullivan coverage under the previous iteration of the ISGP issued on October 21, 2009, effective January 1, 2010, modified effective July 1, 2012, and which expired on December 31, 2014, under the same NPDES permit No. WAR-011414 (the "2010 Permit"). F.H. Sullivan has violated and continues to violate the terms and conditions of the 2010 Permit and 2015 Permit (collectively, the "Permits") with respect to operations of, and discharges of stormwater and pollutants from, its facility located at or near 2219 Talley Way, Kelso, Washington 98626 (the "facility"). The facility subject to this notice includes any contiguous or adjacent properties owned or operated by F.H. Sullivan.

**I. COLUMBIA RIVERKEEPER'S COMMITMENT TO PROTECTING A
FISHABLE AND SWIMMABLE COLUMBIA RIVER.**

Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper is a non-profit organization with members who live, recreate, and work throughout the Columbia River Basin, including near and downstream of F.H. Sullivan's facility.

Threats facing the Columbia River are severe by any measure. See *Columbia River Basin State of River Report for Toxics*, Environmental Protection Agency, Region 10 (January 2009), available online at: <http://yosemite.epa.gov/r10/ecocomm.nsf/Columbia/SoRR/>. In fact, the vast majority of rivers and streams in Washington fail to meet basic state water quality standards for pollutants such as toxics and temperature. See State of Washington 303(d) List, available online at: <http://www.ccy.wa.gov/programs/wq/303d/index.html>. Water quality standards are designed to protect designated uses, including aquatic life, fishing, swimming, and drinking water.

Stormwater runoff is “one of the great challenges of water pollution control” and “is a principal contributor to water quality impairment of waterbodies nationwide.” See *Urban Stormwater Management in the United States*, National Research Council (Oct. 15, 2008), available online at: http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf. When rain sends runoff across city streets, construction projects, and industrial facilities, the water picks up contaminants that are drained into waterways such as the Columbia River and its tributaries. These toxics accumulate in local fish, wildlife, and birds. To address this leading cause of water quality impairment, Columbia Riverkeeper invests significant time and resources in reducing pollutant loads from industrial, municipal, and construction stormwater sources.

This Notice of Intent to Sue F.H. Sullivan is part of Columbia Riverkeeper’s effort to improve water quality in the Columbia River Basin for purposes including swimming, habitat quality, and subsistence, recreational, and commercial fishing. Columbia Riverkeeper has serious concerns about the impacts of F.H. Sullivan’s operations and industrial stormwater discharges on the Cowlitz River, the Columbia River, and the Columbia River. As discussed below, F.H. Sullivan has failed to complete and implement level response actions and failed to adopt and implement a compliant SWPPP. F.H. Sullivan’s operations and stormwater discharges degrade water quality in the Columbia River Basin and place the health and well-being of all who use the Columbia at risk.

II. COMPLIANCE WITH STANDARDS.

A. Violations of Water Quality Standards.

Condition S10.A of the Permits prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington’s efforts to protect clean water. In particular, water quality standards represent the U.S. Environmental Protection Agency (“EPA”) and Ecology’s determinations, based on scientific studies, of the thresholds at which pollution start to cause significant adverse effects on fish or other beneficial uses. For each water body in Washington, Ecology designates the “beneficial uses” that must be protected through the adoption of water quality standards.

A discharger must comply with both narrative and numeric water quality standards. WAC 173-201A-010; WAC 173-201A-510 (“No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter.”). Narrative water quality standards provide legal mandates that supplement the numeric standards. Furthermore, narrative water quality standards apply with equal force, even when Ecology has established numeric water quality standards. Specifically, Condition S10.A of

the Permits requires that F.H. Sullivan’s discharges not cause or contribute to violations of Washington State’s water quality standards.

F.H. Sullivan discharges stormwater to the Coweeman River via a stormwater conveyance system. F.H. Sullivan discharges stormwater with elevated levels of turbidity, zinc, copper, and total suspended solids and with a low/acidic pH as indicated in Table 1 below. Discharges of stormwater from the facility cause and/or contribute to violations of water quality standards for turbidity, zinc, copper, pH, and aesthetic criteria and have occurred each and every day during the last five years on which there was 0.1 inch or more of precipitation at the facility, and continue to occur. These water quality standards include those set forth in WAC 173-201A-240, and -260(2).

<div> <div>Table 1</div> <div>Stormwater Sampling Results Reported by F.H. Sullivan</div> </div>							
	Turbidity (NTU) BM: 25	pH (S.U.) BM: 5-9	Zinc (µg/L) BM: 117	Copper (µg/L) BM: 14	Oil Sheen (y/n) BM: No	COD (mg/L) BM: 120	TSS (mg/L) BM: 100
1 st Quarter 2010	ND	7.1	ND		No		
2 nd Quarter 2010	16.8	6.55	39		No		
3 rd Quarter 2010	2.8	6.26	59		No		
4 th Quarter 2010	2.71	6.7	43		No		
1 st Quarter 2011	11.2	6.79	34		No		
2 nd Quarter 2011	2.44	7.5	16	ND	No		
3 rd Quarter 2011	143	6.87	166	38	No		
4 th Quarter 2011	2.29	6.69	14	ND	No	ND	ND
1 st Quarter 2012	1.68	6.6	16	ND	No	6.1	ND
2 nd Quarter 2012	6.94	7.09	27.4	ND	No	16.8	32
3 rd Quarter 2012							
4 th Quarter 2012	1.07	7.23	ND	ND	No	ND	ND
1 st Quarter 2013	28.9	7.12	130	35		57.2	33
2 nd Quarter 2013	38.8	7.09	43	14.1	No	31.7	55
3 rd Quarter 2013	2.32	6.62	10.8	1.5	No	6.5	50
4 th Quarter 2013	492	7.66	65.8	63.8		61.2	992
1 st Quarter 2014	5.67	6.8	26.5	1.8	No	ND	5
2 nd Quarter 2014	10.4	2.54	84.5	6.8	No	30.2	16.5
3 rd Quarter 2014	4.43	2.08	13.8	2.66	No	24.4	5.0
4 th Quarter 2014	2.34	2.04	15.9	2.0	No	19.7	ND
1 st Quarter 2015	3.28	6.06	50.1	1.8	No	22.6	11.0
	2.57	2.38	177.85	1.95	No	18.5	< 100
	1.78	1.89	(19.6	1.42	No	8.9	ND
	3.95	2.07	5.96	5.35	No	19.9	19.5
508)							
2 nd Quarter 2015	9.21	2.60	30.5	6.90	No	< 120	8.5
3 rd Quarter 2015							
4 th Quarter 2015	4.76	2.55	12.2	1.70	No	6.3	0.0

“BM” stands for “benchmark” and the BM values listed in Table 1 are the benchmark levels established in the Permits. Values in bold indicate benchmark exceedances.

“ND” stands for “no detect” and indicates that monitoring result was below the analytical detection limit.

“COD” stands for “chemical oxygen demand.”

“TSS” stands for “total suspended solids.”

B. Compliance with Standards.

Condition S10.C of the Permits requires F.H. Sullivan to apply all known and reasonable methods of prevention, control and treatment (“AKART”) to all discharges, including preparing and implementing an adequate SWPPP and best management practices (“BMPs”). F.H. Sullivan has violated and continues to violate these conditions by failing to apply AKART to its discharges by, among other things, failing to implement an adequate SWPPP and BMPs as evidenced by the elevated levels of pollutants in its discharge. These violations have occurred on each and every day during the last five years and continue to occur every day.

Condition S1.A of the Permits require that all discharges and activities authorized be consistent with the terms and conditions of the permit. F.H. Sullivan has violated this condition by discharging and acting inconsistent with the conditions of the Permits as described in this Notice of Intent to Sue.

III. STORMWATER POLLUTION PREVENTION PLAN VIOLATIONS.

Columbia Riverkeeper hereby provides notice, based upon information and belief, that F.H. Sullivan has not developed and implemented a SWPPP that complies with the requirements of the Permits. The publically available records indicate that F.H. Sullivan has not prepared and implemented a SWPPP that meets the requirements of the Permits. Further, F.H. Sullivan’s violations of the Permits described herein are evidence of F.H. Sullivan’s ongoing failure to prepare and implement a SWPPP that includes adequate BMPs and that otherwise includes all of the required SWPPP components. In the following section, Columbia Riverkeeper provides notice of SWPPP violations on information and belief. These violations have occurred on each and every day during the last five years and continue to occur every day

Condition S3.A.1 of the Permits requires F.H. Sullivan to develop and implement a SWPPP as specified in the Permits. Condition S3.A.2 of the Permits requires the SWPPP to specify BMPs necessary to provide AKART and ensure that discharges do not cause or contribute to violations of water quality standards. On information and belief, F.H. Sullivan has violated these requirements of the Permits each and every day during the last five years and continues to violate them as it has failed to prepare and/or implement a SWPPP that includes AKART and BMPs necessary to comply with state water quality standards.

Condition S3.A of the Permits requires F.H. Sullivan to have and implement a SWPPP that is consistent with permit requirements, fully implemented as directed by permit conditions, and updated as necessary to maintain compliance with permit conditions. On information and belief, F.H. Sullivan has violated these requirements of the Permits each and every day during

the last five years and continues to violate them because its SWPPP is not consistent with permit requirements, is not fully implemented, and has not been updated as necessary.

The SWPPP fails to satisfy the requirements of Condition S3 of the Permits because it does not adequately describe BMPs. Condition S3.B.4 of the Permits requires that the SWPPP include a description of the BMPs that are necessary for the facility to eliminate or reduce the potential to contaminate stormwater. Condition S3.B.4 of the 2015 Permit requires that the SWPPP detail how and where the selected BMPs will be implemented. Condition S3.A.3 of the Permits requires that the SWPPP include BMPs consistent with approved stormwater technical manuals or document how stormwater BMPs included in the SWPPP are demonstratively equivalent to the practices contained in the approved stormwater technical manuals, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs. F.H. Sullivan's SWPPP does not comply with these requirements because it does not adequately describe and explain in detail the BMPs selected, does not include BMPs consistent with approved stormwater technical manuals, and does not include BMPs that are demonstratively equivalent to such BMPs with documentation of BMP adequacy.

F.H. Sullivan's SWPPP fails to satisfy the requirements of Condition S3.B.2 of the Permits because it fails to include a facility assessment. The SWPPP fails to include an adequate facility assessment because it does not describe the industrial activities conducted at the site, the general layout of the facility including buildings and storage of raw materials, the flow of goods and materials through the facility, the regular business hours, and the seasonal variations in business hours or in industrial activities.

F.H. Sullivan's SWPPP fails to satisfy the requirements of Condition S3.B.1 of the Permits because it does not include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

F.H. Sullivan's SWPPP fails to comply with Condition S3.B.2.b of the Permits because it does not include an inventory of industrial activities that identifies all areas associated with industrial activities that have been or may potentially be sources of pollutants. The SWPPP does not identify all areas associated with outdoor storage of materials or products, outdoor manufacturing and processing, onsite dust or particulate generating processes, on-site waste treatment, storage, or disposal, vehicle and equipment fueling, maintenance, and/or cleaning, roofs or other surfaces exposed to air emissions from a manufacturing building or a process area, and roofs or other surfaces composed of materials that may be mobilized by stormwater as required by these permit conditions.

F.H. Sullivan's SWPPP does not comply with Condition S3.B.2.c of the Permits because it does not include an adequate inventory of materials. The SWPPP does not include an

inventory of materials that lists the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that could result in stormwater pollution, a short narrative for each material describing the potential for the pollutants to be present in stormwater discharge that is updated when data becomes available to verify the presence or absence of the pollutants, a narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater as required. The SWPPP does not include the method and location of on-site storage or disposal of such materials and a list of significant spills and significant leaks of toxic or hazardous pollutants as these permit conditions require.

F.H. Sullivan's SWPPP does not comply with Condition S3.B.3 of the Permits because it does not identify specific individuals by name or title whose responsibilities include SWPPP development, implementation, maintenance and modification.

Condition S3.B.4 of the Permits requires that permittees include in their SWPPPs and implement certain mandatory BMPs unless site conditions render the BMP unnecessary, infeasible, or an alternative and equally effective BMP are provided. F.H. Sullivan is in violation of this requirement because it has failed to include in its SWPPP and implement the mandatory BMPs of the Permits.

F.H. Sullivan's SWPPP does not comply with Condition S3.B.4.b.i of the Permits because it does not include required operational source control BMPs in the following categories: good housekeeping (including definition of ongoing maintenance and cleanup of areas that may contribute pollutants to stormwater discharges, and a schedule/frequency for each housekeeping task); preventive maintenance (including BMPs to inspect and maintain stormwater drainage and treatment facilities, source controls, treatment systems, and plant equipment and systems, and the schedule/frequency for each task); spill prevention and emergency cleanup plan (including BMPs to prevent spills that can contaminate stormwater, for material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs); employee training (including an overview of what is in the SWPPP, how employees make a difference in complying with the SWPPP, spill response procedures, good housekeeping, maintenance requirements, material management practices, how training will be conducted, the frequency/schedule of training, and a log of the dates on which specific employees received training); inspections and recordkeeping (including documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping, including identification of personnel who conduct inspections, provision of a tracking or follow-up procedure to ensure that a report is prepared and appropriate action taken in response to visual monitoring, definition of how F.H. Sullivan will comply with signature and record retention requirements, certification of compliance with the SWPPP and Permit, and all inspection reports completed by F.H. Sullivan).

F.H. Sullivan's SWPPP does not comply with Condition S3.B.4.b.i.7 of the Permits because it does not include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, and other illicit discharges to stormwater sewers, or to surface waters and ground waters of the state.

F.H. Sullivan's SWPPP does not comply with Condition S3.B.4.b.ii of the Permits because it does not include required structural source control BMPs to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff. F.H. Sullivan's SWPPP does not comply with Condition S3.B.4.b.iii of the Permits because it does not include treatment BMPs as required.

F.H. Sullivan's SWPPP fails to comply with Condition S3.B.4.b.v of the Permits because it does not include BMPs to prevent the erosion of soils or other earthen materials and prevent off-site sedimentation and violations of water quality standards.

F.H. Sullivan's SWPPP fails to satisfy the requirements of Condition S3.B.5 of the Permits because it fails to include a stormwater sampling plan as required. The SWPPP does not include a sampling plan that identifies points of discharge to surface waters, storm sewers, or discrete ground water infiltration locations, documents why each discharge point is not sampled, identifies each sampling point by its unique identifying number, identifies staff responsible for conducting stormwater sampling, specifies procedures for sampling collection and handling, specifies procedures for sending samples to the a laboratory, identifies parameters for analysis, holding times and preservatives, laboratory quantization levels, and analytical methods, and that specifies the procedure for submitting the results to Ecology.

IV. MONITORING AND REPORTING VIOLATIONS.

A. Failure to Collect Quarterly Samples.

Condition S4.B of the Permits requires F.H. Sullivan to collect a sample of its stormwater discharge once during every calendar quarter. Conditions S3.B.5.b and S4.B.2.c of the Permits require F.H. Sullivan to collect stormwater samples at each distinct point of discharge offsite except for substantially identical outfalls, in which case only one of the substantially identical outfalls must be sampled. These conditions set forth sample collection criteria, but require the collection of a sample even if the criteria cannot be met.

F.H. Sullivan violated these requirements by failing to collect stormwater samples in compliance with these requirements from any of its discharge points during the third quarter of 2012 and the third quarter of 2015.

F.H. Sullivan has further violated and continues to violate these conditions because it does not sample each distinct point of discharge off-site each quarter. These violations have occurred and continue to occur each and every quarter since the third quarter of 2012 that F.H. Sullivan was and is required to sample its stormwater discharges, including the quarters in which it collected stormwater discharge samples from some, but not all, points of discharge. These violations will continue until F.H. Sullivan commences monitoring all distinct points of discharge.

B. Failure to Analyze Quarterly Samples.

Conditions S5.A.1 and S5.B.1 of the Permits require F.H. Sullivan to analyze stormwater samples collected quarterly for turbidity, pH, total copper, total zinc, oil sheen, chemical oxygen demand, and total suspended solids. F.H. Sullivan violated these conditions by failing to analyze stormwater samples as indicated in Table 2 below:

Table 2 Pollutant Parameters Not Analyzed	
Monitoring Quarter	Parameters Not Analyzed
3 rd Quarter 2012	turbidity, pH, total copper, total zinc, oil sheen, chemical oxygen demand, and total suspended solids
1 st Quarter 2013	oil sheen
4 th Quarter 2013	oil sheen
3 rd Quarter 2015	turbidity, pH, total copper, total zinc, oil sheen, chemical oxygen demand, and total suspended solids

C. Failure to Comply with Visual Monitoring Requirements.

Condition S7.A of the Permits requires that monthly visual inspections be conducted at the facility by qualified personnel. Each inspection is to include observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged, observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharges, observations for the presence of illicit discharges, a verification that the descriptions of potential pollutant sources required by the permit are accurate, a verification that the site map in the SWPPP reflects current conditions, and an assessment of all BMPs that have been implemented (noting the effectiveness of the BMPs inspected, the locations of BMPs that need maintenance, the reason maintenance is needed and a schedule for maintenance, and locations where additional or different BMPs are needed).

Condition S7.C of the Permits requires that F.H. Sullivan record the results of each inspection in an inspection report or checklist that is maintained on-site and that documents the observations, verifications, and assessments required. The report/checklist must include the time and date of the inspection, the locations inspected, a statement that, in the judgment of the person conducting the inspection and the responsible corporate officer, the facility is either in compliance or out of compliance with the SWPPP and the Permit, a summary report and schedule of implementation of the remedial actions that F.H. Sullivan plans to take if the site inspection indicates that the facility is out of compliance, the name, title, signature and certification of the person conducting the facility inspection, and a certification and signature of the responsible corporate officer or a duly authorized representative.

F.H. Sullivan is in violation of these requirements of Condition S7 of the Permits because, since July 1, 2012, it has failed to conduct each of the requisite visual monitoring and inspections, failed to prepare and maintain the requisite inspection reports or checklists, and failed to make the requisite certifications and summaries.

V. CORRECTIVE ACTION VIOLATIONS.

A. Violations of the Level One Requirements of the Permits.

Condition S8.B of the Permits requires F.H. Sullivan take specified actions, called a “Level One Corrective Action,” each time quarterly stormwater sample results exceed a benchmark value or are outside the benchmark range for pH. Condition S8.A of the 2015 Permit requires that F.H. Sullivan implement any Level One Corrective Action required by the 2010 Permit.

For a Level One Corrective action, Condition S8.B.1.a of the Permits requires F.H. Sullivan to “[c]onduct an inspection to investigate the cause” of the benchmark exceedance. Additionally, for a Level One Corrective Action, Condition S8.B of the Permits requires F.H. Sullivan to: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits and contains the correct BMPs from the applicable Stormwater Management Manual; (2) make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark values in future discharges and sign and certify the revised SWPPP in accordance with the Permits; and (3) summarize the Level One Corrective Action in the Annual Report required under Condition S9.B of the Permits. Condition S8.B of the Permits requires F.H. Sullivan to implement the revised SWPPP as soon as possible, and no later than the DMR due date for the quarter the benchmark was exceeded.

Conditions S5.A and S5.B and Tables 2 and 3 of the Permits establish the following applicable benchmarks: turbidity 25 NTU; pH 5 – 9 SU; no visible oil sheen; total copper 14 µg/L; total zinc 117 µg/L; chemical oxygen demand 120 mg/L; and total suspended solids 100 mg/L.

F.H. Sullivan has violated the requirements of the Permits described above by failing to conduct a Level One Corrective Action in accordance with permit conditions, including the required investigation, the required review, revision and certification of the SWPPP, the required implementation of additional BMPs, and the required summarization in the annual report each time during the last five years that quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH, including the benchmark excursions listed in Table 1 in Section II.A of this letter that occurred during that period.

These benchmark excursions are based upon information currently available to Columbia Riverkeeper from Ecology’s publicly available records. Columbia Riverkeeper provides notice of its intent to sue F.H. Sullivan for failing to comply with all of the Level One Corrective Action requirements described above each time during the last five years that its quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH.

B. Violations of the Level Two Requirements of the Permits.

Condition S8.C of the Permits requires F.H. Sullivan to take specified actions, called a “Level Two Corrective Action,” each time quarterly stormwater sample results exceed an applicable benchmark value or are outside the benchmark range for pH for any two quarters during a calendar year. Condition S8.A of the 2015 Permit requires that F.H. Sullivan implement any Level Two Corrective Action required by the 2010 Permit.

As described by Condition S8.C of the Permits, a Level Two Corrective Action requires F.H. Sullivan: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and sign and certify the revised SWPPP in accordance with Condition S3 of the Permits; and (3) summarize the Level Two Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits. Condition S8.C.4 of the Permits requires that F.H. Sullivan implement the revised SWPPP according to Condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than August 31st of the following year.

The Permits establish the benchmarks applicable to F.H. Sullivan described in Section V.A of this Notice of Intent to Sue.

F.H. Sullivan has violated the requirements of the Permits described above by failing to conduct a Level Two Corrective Action in accordance with permit conditions, including the required review, revision and certification of the SWPPP, the required implementation of additional BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge), including additional structural source control BMPs, and the required summarization in the annual report each time since and including 2010 that its quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any two quarters during a calendar year.

C. Violations of the Level Three Requirements of the Permits.

Condition S8.D of the Permits requires F.H. Sullivan take specified actions, called a “Level Three Corrective Action,” each time quarterly stormwater sample results exceed an applicable benchmark value or are outside the benchmark range for pH for any three quarters during a calendar year. Condition S8.A of the 2015 Permit requires that F.H. Sullivan implement any Level Three Corrective Action required by the 2010 Permit.

As described by Condition S8.D of the Permits, a Level Three Corrective Action requires that F.H. Sullivan: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and additional operational and/or structural source control BMPs if necessary for proper function and maintenance of treatment BMPs; and (3) summarize the Level Three Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the

Permits, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.

Condition S8.D.2.b of the 2010 Permit requires that a licensed professional engineer, geologist, hydrogeologist, or certified professional in storm water quality must design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes. Condition S8.D.3 of the 2010 Permit requires that, before installing BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, F.H. Sullivan submit an engineering report, plans, and specifications, and an operations and maintenance manual to Ecology for review in accordance with chapter 173-204 of the Washington Administrative Code. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3 of the 2010 Permit requires that the plans and specifications and the operations and maintenance manual must be submitted to Ecology at least 30 days before construction/installation.

Condition S8.D.2.b of the 2015 Permit requires that a Qualified Industrial Stormwater Professional shall review the revised SWPPP, sign the SWPPP Certification Form, and certify that it is reasonably expected to meet the ISGP benchmarks upon implementation. Additionally, Condition S8.D.3 of the 2015 Permit requires that, before installing any BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, F.H. Sullivan submit an engineering report, certified by a licensed professional engineer, to Ecology for review. The report must contain: (1) a brief summary of the treatment alternatives considered and why the proposed option was selected, including cost estimates of ongoing operation and maintenance and disposal of any spent media; (2) the basic design data, including characterization of stormwater influent and sizing calculations for the treatment units; (3) a description of the treatment process and operation, including a flow diagram; (4) the amount and kind of chemicals used in the treatment process, if any; (5) the expected results from the treatment process including the predicted stormwater discharge characteristics; and (6) a statement, expressing sound engineering justification—through the use of pilot plant data, results from similar installations, and/or scientific evidence—that the proposed treatment is reasonably expected to meet the permit benchmarks. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3.c of the 2015 Permit requires that an operations and maintenance manual must be submitted to Ecology at least 30 days after construction/installation of the treatment BMPs is complete.

Condition S8.D.5 of the Permits requires that F.H. Sullivan fully implement the revised SWPPP according to Condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than September 30th of the following year.

The Permits establish the benchmarks applicable to F.H. Sullivan described in Section V.A of this Notice of Intent to Sue.

F.H. Sullivan has violated the requirements of the Permits described above by failing to conduct a Level Three Corrective Action in accordance with applicable permit conditions—including the required review, revision and certification of the SWPPP, including the requirement to have a specified professional design and stamp the portion of the SWPPP pertaining to treatment, the required implementation of additional BMPs, including additional treatment BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge), the required submission of an engineering report, plans, specifications, and an operations and maintenance plan, and the required summarization in the annual report—each time since and including 2010 that F.H. Sullivan’s quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any three quarters during a calendar year. As indicated in Table 1 in Section II.A of this letter, these violations include, but are not limited to, F.H. Sullivan’s failure to fulfill these obligations for pH for 2014.

The benchmark excursions identified in Table 1 are based upon information currently available to Columbia Riverkeeper from Ecology’s publicly available records. Columbia Riverkeeper provides notice of its intent to sue F.H. Sullivan for failing to comply with all of the Level Three Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value or were outside the benchmark range for pH for any three quarters during a calendar year, including any such excursions that are not discussed herein, since and including 2010. However, Columbia Riverkeeper does not contend that F.H. Sullivan has failed to fulfill the Level Three Corrective Actions for turbidity and copper triggered by stormwater sampling in 2013, as those requirements were modified by an Ecology order dated September 25, 2014.

VI. VIOLATIONS OF THE ANNUAL REPORT REQUIREMENTS.

Condition S9.B of the Permits requires F.H. Sullivan to submit an accurate and complete annual report to Ecology no later than May 15 of each year. The annual report must include corrective action documentation as required in Condition S8.B through S8.D. If a corrective action is not yet completed at the time of submission of the annual report, F.H. Sullivan must describe the status of any outstanding corrective action. Specific information to be included in the annual report is identification of the conditions triggering the need for corrective action, description of the problem and identification of dates discovered, summary of any Level 1, 2, or 3 corrective actions completed during the previous calendar year, including the dates corrective actions were completed, and a description of the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, including identification of the date F.H. Sullivan expects to complete the corrective actions. F.H. Sullivan has violated this condition by failing to submit complete and accurate annual reports within the time prescribed.

F.H. Sullivan’s 2010 annual report was not timely submitted.

The 2011 annual report does not contain the required information for the Level One Corrective Actions triggered for turbidity, zinc, and copper in the third quarter of 2011. For example, the 2011 annual report should have:

- Contained a summary of the Level 1 Corrective Actions for turbidity, zinc, and copper, including the dates on which these actions were completed (Permit §§ S9.B.2; S8.B.2; S9.B.3.c);
- Contained a description of the status of the outstanding Level 1 Corrective Actions for turbidity, zinc, and copper (Permit § S9.B.2);
- Identified the condition triggering the need for corrective action review for turbidity, zinc, and copper (Permit § S9.B.3.a); and
- Described the problem(s) that caused the turbidity, zinc, and copper exceedances and identified the dates on which they were discovered (Permit § S9.B.3.b).

The 2013 annual report does not contain the required information for the Level One Corrective Actions triggered for turbidity in the first, second, and fourth quarters of 2013, for zinc triggered in the first quarter of 2013, for copper triggered in the first, second, and fourth quarters of 2013, and for total suspended solids triggered in the fourth quarter of 2013. For example, the 2013 annual report should have:

- Contained a summary of the Level 1 Corrective Actions for turbidity, zinc, copper, and total suspended solids, including the dates on which these actions were completed (Permit §§ S9.B.2; S8.B.2; S9.B.3.c);
- Contained a description of the status of the outstanding Level 1 Corrective Actions for turbidity, zinc, copper, and total suspended solids (Permit § S9.B.2);
- Identified the condition triggering the need for corrective action review for turbidity, zinc, copper, and total suspended solids (Permit § S9.B.3.a); and
- Described the problem(s) that caused the turbidity, zinc, copper, and total suspended solids exceedances and identified the dates on which they were discovered (Permit § S9.B.3.b).

The 2014 annual report does not include the required information for the Level One Corrective Actions for pH triggered in the second, third and fourth quarters of 2014, or the required information for the Level Three Corrective Action for pH triggered in 2014. For example, the 2014 Annual Report should have:

- Summarized the Level One Corrective Actions taken for pH in the second, third, and fourth quarters, including the dates on which these actions were completed (Permit §§ S9.B.2; S8.B.2; S9.B.3.c);
- Summarized the Level Three Corrective Action planned for pH, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed to address turbidity (Permit §§ S9.B.2; S8.D.4);
- Described the status of the outstanding Level One Corrective Actions for pH from the second, third, and fourth quarters (Permit § S9.B.2);
- Identified the condition triggering the need for corrective action review for pH (Permit § S9.B.3.a); and
- Described the problem(s) that caused the pH benchmark excursions and identified the dates on which they were discovered (Permit § S9.B.3.b).

VII. VIOLATIONS OF THE RECORDKEEPING REQUIREMENTS.

A. Failure to Record Information.

Condition S4.B.3 of the 2010 Permit requires F.H. Sullivan to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if F.H. Sullivan collected the sample within the first 30 minutes of stormwater discharge event, an explanation of why F.H. Sullivan could not collect a sample within the first 30 minutes of a stormwater discharge event, the sample location, method of sampling and of preservation, and the individual performing the sampling. Condition S4.B.3 of the 2015 Permit requires F.H. Sullivan to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if F.H. Sullivan collected the sample within the first 12 hours of stormwater discharge event, an explanation of why F.H. Sullivan could not collect a sample within the first 12 hours of a stormwater discharge event, the sample location, method of sampling and of preservation, the individual performing the sampling, and the weather conditions. Upon information and belief, F.H. Sullivan is in violation of these conditions as it has not recorded each of these specified items for each sample taken July 1, 2012.

B. Failure to Retain Records.

Condition S9.C of the Permits requires F.H. Sullivan to retain for a minimum of five years a copy of the Permits, a copy of F.H. Sullivan's permit coverage letters, records of all sampling information, inspection reports including required documentation, any other documentation of compliance with permit requirements, all equipment calibration records, all BMP maintenance records, all original recordings for continuous sampling instrumentation, copies of all laboratory results, copies of all required reports, and records of all data used to complete the application for the Permits. Upon information and belief, F.H. Sullivan is in violation of these conditions because it has failed to retain records of such information, reports, and other documentation since July 1, 2012.

VIII. REQUEST FOR SWPPP.

Pursuant to Condition S9.F of the 2015 Permit, Columbia Riverkeeper hereby requests that F.H. Sullivan provide a copy of, or access to, the SWPPP for the facility complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to Brian A. Knutsen at the address provided below.

Should F.H. Sullivan fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the 2015 Permit, it will be in violation of that condition, which violation shall also be subject to this Notice of Intent to Sue and any ensuing lawsuit.

IX. PARTY GIVING NOTICE OF INTENT TO SUE.

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper
111 Third Street
Hood River, Oregon 97031
(541) 387-3030

X. ATTORNEYS REPRESENTING RIVERKEEPER.

The attorneys representing Columbia Riverkeeper in this matter are:

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
833 S.E. Main Street, No. 318
Portland, Oregon 97214
(503) 841-6515
brian@kampmeierknutsen.com

Lauren Goldberg, Staff Attorney
Columbia Riverkeeper
111 Third Street
Hood River, OR 97031
(541) 965-0985
lauren@columbiariverkeeper.org
(Licensed in Oregon)

XI. CONCLUSION.

The above-described violations reflect those indicated by the information currently available to Columbia Riverkeeper. These violations are ongoing. Columbia Riverkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation. In addition to civil penalties, Columbia Riverkeeper will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Columbia Riverkeeper believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. Columbia Riverkeeper intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against F.H. Sullivan Company, Inc. under Section 505(a) of the Clean Water Act for the violations described herein.

Columbia Riverkeeper is willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within ten (10) days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By: 
Brian A. Knutsen

cc: Regina McCarthy, Administrator, U.S. EPA
Dennis McLerran, Region 10 Administrator, U.S. EPA
Maia Bellon, Director, Washington Department of Ecology
Laurel Banning, Registered Agent

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of Washington and the United States that I am counsel for Columbia Riverkeeper and that on March 29, 2016, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act and Request for Stormwater Pollution Prevention Plan to be served on the following by depositing it with the United States Postal Service, certified mail, return receipt requested, postage prepaid:

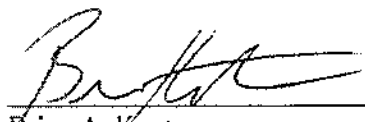
Managing Agent
F.H. Sullivan Company, Inc.
2219 Talley Way
Kelso, Washington 98626

Laurel Banning, Registered Agent
2219 Talley Way
Kelso, Washington 98626

Administrator Regina A. McCarthy
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W., Mail Code 1101A
Washington, D.C. 20460

Director Maia D. Bellon
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Regional Administrator Dennis J. McLerran
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code RA-210
Seattle, WA 98101



Brian A. Knutsen